

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

PAUL M. FARRAR,

06-CV-442-JE

Plaintiff,

ORDER

v.

CITY OF ASTORIA, STEPHEN  
WINSTEAD, and WINSTEAD AND  
ASSOCIATES,

Defendants.

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Attorney for Plaintiff

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Attorney for Defendants

**BROWN, Judge.**

Magistrate Judge John Jelderks issued Findings and Recommendation (#40) on December 29, 2006, in which he recommended this Court grant Defendants' Motion for Summary Judgment (#25). Plaintiff Paul M. Farrar filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 920 (1982).

This Court has reviewed the record *de novo*, including Plaintiff's objections, and concludes the Magistrate Judge properly found (1) Plaintiff's substantive due-process claim is preempted by the Fifth Amendment takings clause and is not ripe; (2) Defendants did not deny Plaintiff equal protection; (3) there is not any evidence in the record of a final decision by Defendants as to Plaintiff's application for a building permit, and, therefore, Defendants are entitled to summary judgment on Plaintiff's state-law claim for breach of a duty to provide a

building permit; and (4) the Court should dismiss Plaintiff's state common-law claim with prejudice. The Court does not find any error in the Magistrate Judge's Findings and Recommendation.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Jelderks's Findings and Recommendation (#40). Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment (#25).

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of March, 2007.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge